

Guidelines to Assist School Districts Implement HB 91 (KRS 158.156)

House Bill 91 was enacted during the 2008 legislative session. During the legislative process, HB91 was sometimes referred to as the “Golden Rule Bill” or the “Bullying Bill.” Because these “titles” have frequently been used, there is some confusion about the provisions and requirements of HB 91. The legislation is actually much broader than just a “Bullying Bill” and focuses on students who are victims of felony offenses (specified under KRS Chapter 508). HB 91 requires *any* school employee (or an employee of the board of education), who has reasonable cause to believe a student has been the victim of one of these offenses, to make a written or oral report to the principal of the school attended by the student/victim. Through the provisions of HB 91, it will be possible for school and district employees to report serious safe-school incidents, including bullying (rising to the level of a felony offense), to the principal so that quick and effective actions can take place to ensure the safety and well-being of all students.

Since the passage of HB 91, the new legislation has been officially codified as a new section under KRS 158.156. Although the majority of the new legislation has been codified under KRS 158.156, other statutes (laws) were referenced in the legislation. They include:

- *KRS 158.148 provides new information about information that needs to be included in local Codes of Acceptable Behavior and Discipline (See Section 3 below)*
- *KRS 525.070 provides additional information about the definition of “Harassment”(See Section 4 below)*
- *KRS 525.080 provides clarification about the definition of “Harassing Communications” (See Section 5 below)*

School Requirements for Compliance with HB 91 **(KRS 158.156) Procedures to be Followed**

- School employees report to principal (suspected student victims of felony offenses under KRS Chapter 508)
- Within 48 hours, principal files written report with local board of education* (through the Superintendent as the executive agent of the BOE), and one of three local law-enforcement agencies (See Section 1)
- Principal notifies parents or guardians of student **
- The agency receiving the principal’s report will conduct an investigation (school and/or board may participate in the investigation if the agency requests)
- If a law or board violation has occurred, school will report incident as part of safe school data reporting

**Note: The principal may use the forty-eight hour timeframe to investigate the allegations of the initial report. If the principal doesn’t find any evidence of a KRS Chapter 508 felony offense, he/she does not have to file a report with the agencies listed below (see Section 1). If the principal is in doubt as to whether there has been a KRS*

Chapter 508 offense, he/she should consult with the local law enforcement and the board attorney.

*If the reported offense rises to the level of those included under KRS Chapter 508, the superintendent will inform the local board of education that the incident has been reported to one of the three agencies listed below (in accordance with KRS 158.156). The superintendent will **not** share details of the reportable offense with the board of education until all facts (and resulting disciplinary decisions, if any) are determined.*

***Note: The law isn't clear as to whether both the parents of the alleged victim and the alleged perpetrator should be notified. Best practices would involve notifying and informing the parents of the alleged victim and the parents of the alleged perpetrator.*

HB 91 also specifies new requirements for the Kentucky Department of Education. These include the following:

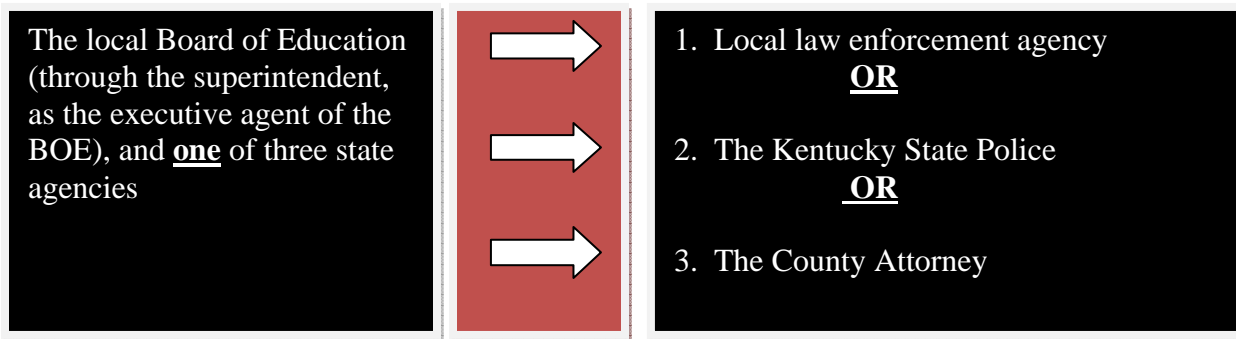
Requirements for KDE relative to HB 91(KRS 158.444)

KDE will provide an annual report to the Office of Education Accountability (OEA) on statewide safe-school data. The annual report will include monthly data and cumulative data for the year. Data will be reported by school district, schools in each district, and grade-levels within each school. The annual report to OEA will be delivered by August 31 of each year.

The following is a brief description/interpretation of various sections in HB 91 (KRS 158.156) that pertain to school districts:

SECTION 1 (KRS 158.156)

This section states that any school employee who has reasonable cause to believe that a student has been the victim of a **felony** offense under **KRS Chapter 508 (see below for list of offenses)** by another student shall **immediately** make an oral **or** written report to the principal of the school attended by the victim. After receiving the initial report and determining that it is a reportable incident, the **principal** must notify the parents, legal guardians, or other persons with custodial control of the students involved in the incident. If the principal determines there is a reportable incident, he/she **shall** file a written report within forty-eight (48) hours of the original report. The written report will be filed with the local Board of Education (through the superintendent), and **one** of three state agencies (see below).



If the principal determines that a written report should be filed with **one** of the three state agencies, the following information will need to be included in the report:

- The names and addresses of the student (victim) AND his/her parents, legal guardians
- The student's (victim) age,
- The nature and extent of the violation,
- The name and address of the student (perpetrator) allegedly responsible for the violation: and,
- Any other information that the principal making the report believes may be helpful in the investigation process

Felony Offenses under KRS Chapter 508 include:

For a description of each KRS Chapter 508 offense, go to www.lrc.ky.gov/KRS/508-00/CHAPTER.htm

- First Degree Assault
- Second Degree Assault
- Third Degree Assault
- Assault Under Extreme Emotional Disturbance
- First Degree Wanton Endangerment
- First Degree Terroristic Threatening
- Second Degree Terroristic Threatening
- First Degree Criminal Abuse
- Second Degree Criminal Abuse
- First Degree Stalking
- Disarming a Police Officer

The agency (local law enforcement, or the Kentucky State Police, or the County Attorney) that receives a report under this Section shall investigate the matter. The school board and school personnel shall participate in the investigation at the request of the agency.

KRS 158.156 states, “Anyone acting upon reasonable cause in the making of a report required under this section in good faith shall have immunity from any liability, civil or criminal, that might be otherwise be incurred or imposed.”

SECTION 2 (KRS 158.444)

This section contains a description of the different types of safe school incidents that schools are required to report annually to the Kentucky Department of Education (KDE). **This Section does not include any changes from current practice in regard to the reporting of safe school data; however, there is new language to stress the importance of reporting the following:**

- all incidents where a student has been disciplined by the school for a “serious incident”*
- all incidents where a student is charged criminally for an offense included in KRS Chapter 508
- all incidents where a student is charged criminally for harassment (KRS 525.070)
- all incidents where a student is charged criminally for harassing communications (KRS 525.080)

*KRS 158.148 requires the Kentucky Department of Education (KDE) to define “serious incident” for reporting purposes. KDE is defining “serious incident” as any incident committed by a student resulting in a safe-school incident report with the student (perpetrator) receiving corporal punishment, suspension, or expulsion.

Parents, legal guardians, or other persons with custodial control shall have the right to inspect or challenge student records consistent with the Family Educational Records and Privacy Act (FERPA) <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html> and the Kentucky Educational Records and Privacy Act (KERPA) <http://www.lrc.ky.gov/KRS/160-00/700.PDF>.

Any incident reported in the safe school data for an individual student will remain in his/her permanent folder.

KRS 158.148 contains new language that requires the provision of “a model policy” to Implement the provisions of this section and Sections 1, 2, 4, and 5 of this Act.” A collection of model policies, provided by the Kentucky School Boards Association (KSBA) can be found at the end of this document.

SECTION 3 (KRS 158.148)

This Section requires districts to update their Code of Acceptable Behavior and Discipline **every two years with the first update completed by November 30, 2008.**

The District Code Shall Contain*:

1. *Procedures for identifying, documenting, and reporting incidents of violations of the code and incidents for which reporting is required under Section 1 of this Act*
2. *Procedures for investigating and responding to a complaint or a report of a violation of the code or of an incident for which reporting is required under Section 1 of this Act, including reporting incidents to the parents, legal guardians, or other persons exercising custodial control or supervision of the students involved*
3. *A strategy or method of protecting from retaliation a complainant or person reporting a violation of the code or an incident for which reporting is required under Section 1 of the Act*
4. *A process for informing students, parents, legal guardians (or other persons exercising custodial control or supervision) and school employees of the requirements of the code... including training for school employees; and,*
5. *Information regarding the consequences of violating the code*

*New language in HB 91 (KRS 158.156) requires school districts to provide very clear and specific information in their Codes of Acceptable Behavior and Conduct about how they intend to implement the various provisions of this legislation. These new requirements will result in uniform policies and procedures in school districts across Kentucky.

Criminal Harassment (KRS 525.070 and KRS 525.080)

HB 91 amended two criminal statutes that address **criminal harassment**. These two sections, **Section 4** (KRS 525.070) and **Section 5** (KRS 525.080), are **misdemeanors** and thus are not part of the mandatory reporting requirement of HB 91. Depending upon the circumstances involved in an incident involving harassment, a school may report the incident to law enforcement; however, that is up to the district. All administrators should keep in mind that whether an incident is reported to law enforcement or not, the school retains the ability to take district disciplinary action for any misbehavior, even if the misbehavior does not rise to the level where a report to law enforcement is necessary.

SECTION 4 (KRS 525.070) Harassment

There were changes made in this statute (related to HB 91) to more clearly define harassment. These include the **intent** to intimidate where information is included about various school locations such as school premises, school-sponsored transportation, or school-sponsored events where harassment may occur. **Schools should report any incidents of harassment as they would have in the past (as safe school incidents).**

SECTION 5 (KRS 525.080) Harassing Communications

The addition to this statute states that a person is guilty of harassing communications if “he/she communicates while enrolled as a student in a local school district with another student in any manner that would cause the other student to suffer from fear of physical harm, intimidation, humiliation, or embarrassment....” This could also include any harassing communication that takes place away from school property. Usually, schools only report when the educational process is disrupted. If this behavior manifests itself at school, the school should pursue appropriate action through their Codes of Acceptable Behavior and Discipline or local law enforcement. If harassing communications are brought to the attention of the principal, it would be best to consult with the local board attorney for advice. **Schools should report any incidents of harassing communications as they would have in the past.**